the discharge was obtained, unless it appear that the plaintiff proved his debt against the defendant's estate in insolvency, or in some manner became a party to the proceedings. Insolvent laws of one State cannot discharge the contracts of citizens of other States; because such laws have no extra territorial operation, and consequently the tribunal sitting under them, unless in cases where a citizen of such other State voluntarily becomes a party to the proceedings, has no jurisdiction of the case.*

Unquestionably, the decision in those cases controls the present case, and renders further remarks upon the subject unnecessary. Demurrer should have been sustained.

JUDGMENT REVERSED with costs, and the cause remanded for further proceedings in conformity to the opinion of this court.

THE MOSES TAYLOR.

1. A contract for the transportation of passengers by a steamship on the ocean is a maritime contract, and there is no distinction in principle between it and a contract for the like transportation of merchandise. The same liability attaches upon its execution both to the owner and the steamship.
2. The distinguishing and characteristic feature of a suit in admiralty, is that the vessel or thing proceeded against itself is seized and impleaded as the defendant, and is judged and sentenced accordingly. By the common law process, property is reached only through a personal defendant, and then only to the extent of his title.
3. A statute of California, which authorizes actions *in rem* against vessels for causes of action cognizable in the admiralty, to that extent attempts to invest her courts with admiralty jurisdiction.
4. The judicial power of the United States is in some cases unavoidably exclusive of all State authority, and in all others it may be made so at the election of Congress.
5. The provision of the ninth section of the Judiciary Act, which vests in the District Courts of the United States exclusive cognizance of civil causes of admiralty and maritime jurisdiction, is constitutional.
6. The clause of the ninth section, saving to suitors "the right of a common

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* Baldwin *v.* Hale, 1 Wallace, 223; Baldwin *v.* Bank of Newbury, Id. 234.

law remedy, where the common law is competent to give it," does not save a proceeding *in rem*, as used in the admiralty courts. Such a proceeding is not a remedy afforded by the common law.

A STATUTE of California, passed in 1851, and amended in 1860, provides that all steamers, vessels, and boats, shall be liable—

1st. For services rendered on board at the request of, or on contract with, their respective owners, masters, agents, or consignees.

2d. For supplies furnished for their use, at the request of their respective owners, masters, agents, or consignees.

3d. For materials furnished in their construction, repair, or equipment.

4th. For their wharfage and anchorage within the State.

5th. For non-performance or mal-performance of any contract for the transportation of persons or property made by their respective owners, masters, agents, or consignees.

6th. For injuries committed by them to persons or property.

And that the "said several causes of action shall constitute liens upon all steamers, vessels, and boats, and have priority in their order, herein enumerated," with preference over all other demands.

The statute also provides that actions for demands arising upon any of the grounds above specified, may be brought directly against such steamers, vessels, or boats; that the complaint shall designate the steamer, vessel, or boat by name; that the summons may be served on the master, mate, or any one having charge of the same; that the same may be attached as security for the satisfaction of any judgment that may be recovered; and that if the attachment be not discharged, and a judgment be recovered by the plaintiff, the steamer, vessel, or boat, may be sold by the sheriff, and the proceeds applied to the payment of the judgment.

With this statute in force, the steamship Moses Taylor, a vessel of over one thousand tons burden, was owned, in 1863, by Roberts, of the city of New York, and was employed by him in navigating the Pacific Ocean, and in car-

rying passengers and freight between Panama and San Francisco. In October of that year, one Hammons entered into a contract with Roberts, as owner of this steamship, by which, in consideration of $100, Roberts agreed to transport him from New York to San Francisco as a steerage passenger, with reasonable despatch, and to furnish him with proper and necessary food, water, and berths, or other conveniences for lodging, on the voyage. For alleged breach of this contract Hammons brought this action, *a proceeding against the vessel*, in a court of a justice of the peace within the city of San Francisco; such courts at that time having, by statute of California, jurisdiction of these cases where the amount claimed did not exceed $200, which it did not here. The breach alleged was that the plaintiff was detained at the Isthmus of Panama eight days; and that the provisions furnished him on the vessel were unwholesome, and that he was crowded into an unhealthy cabin, without sufficient room or air for either health or comfort, in consequence of the large number of steerage passengers, more than the vessel was allowed by law to have or could properly carry, to his damage, &c.

The agent of the vessel filed an answer in which he denied the allegations of the complaint, and asserted that the court had no jurisdiction; because the cause of action, as against the said vessel, was one of which the courts of admiralty had exclusive jurisdiction; for that the vessel was used exclusively in navigating the high seas, and that the said cause of action, if any, arose on the high seas.

The justice decided that he had jurisdiction, and gave judgment for the $200 claimed. The case was then taken to the County Court, where the objection to the jurisdiction was again made and again overruled. The court found as fact that Hammons had been carried on the steamer Illinois from New York to Aspinwall, thence, after the delay alleged, on railway across the Isthmus to Panama, and from there on the Moses Taylor to San Francisco; and, in substance, that the other facts alleged were as stated in the complaint. Whereupon, final judgment was entered in ac-

cordance with the decision, and from that judgment the defendant, owner of the vessel, brought this writ of error.

Messrs. W. M. Evarts and Edwards Pierrepont for the plaintiff in error:

I. An agreement to transport a man or a horse over the ocean is a "*maritime contract,*" and comes under the admiralty and maritime jurisdiction.*

It cannot be doubted that Hammons could have proceeded against the steamer *in rem* in the District Court of the United States, for the cause of action against the steamer set forth in the complaint.

II. The proceeding in this case is not according to the common law, but with every trait and incident of a suit in admiralty, *in rem.* The vessel is arrested and impleaded as the "*reus*" or defendant.

III. The admiralty jurisdiction of the Federal courts is exclusive, and any intrusion of a State court within such admiralty jurisdiction is unconstitutional.

The first section of the third article of the Constitution of the United States, is as follows:

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

And the first clause of the second section of the same article is in these words:

"The judicial power shall extend . . . . to all cases of admiralty and maritime jurisdiction."

The ninth section of the Judiciary Act of 1789 declares that—

* The Schooner Tiltan, 5 Mason, 465; Plummer *v.* Webb, 4 Id. 380; Drinkwater *v.* The Brig Spartan, Ware, 91; Steel *v.* Thatcher, Id. 149; De Lovio *v.* Boit, 2 Gallison, 465; The Sloop Mary, 1 Paine, 673; Davis *v.* A New Brig, Gilpin, 473, 1 Kent's Com. 370, 371; New Jersey Steam Navigation Company *v.* Merchants' Bank, 6 Howard, 344; Bazin *v.* Liverpool Steamship Company, 5 American Law Register, 465.

"The District Courts shall have, *exclusively* of the courts of the several States, ... cognizance of *all civil causes of admiralty and maritime jurisdiction;* . . . . saving to suitors, in all cases, the right of a common law remedy, *where the common law is competent to give it.*"

This exclusive jurisdiction has for seventy years been the settled law; and has been repeatedly affirmed by the courts.

In *Martin* v. *Hunter*,* this court says:

"It is manifest that the judicial power of the United States is, unavoidably, in some cases, exclusive of all State authority, and in all others may be made so at the election of Congress. No part of the criminal jurisdiction of the United States can, consistently with the Constitution, be delegated to State tribunals. The *admiralty and maritime jurisdiction is of the same exclusive cognizance.*"

In *Cohen* v. *Virginia*,† it was conceded that the Federal courts had the "*exclusive* admiralty and maritime jurisdiction."

In *Martin* v. *Hunter*, Mr. Justice Johnson says:

"With regard to *admiralty* and *maritime jurisdiction*, it would be difficult to prove that the States could resume it, if the United States should abolish the courts vested with that jurisdiction."

An affirmation of this exclusive jurisdiction will be found in the opinion of Chief Justice Marshall, in *Slocum* v. *Mayberry*;‡ and of Story, J., in *Gelston* v. *Hoyt*;§ and of Justices Wayne and Catron, in *Waring* v. *Clarke*,‖ all cases in this court.

Of the validity of the clause in the ninth section of the Judiciary Act, which attributes exclusive admiralty jurisdiction to the District Courts of the United States, no serious question has ever been made, until the Supreme Court of California claimed for the State full admiralty jurisdiction.

But this claim was but an incident of the more extrava-

* 1 Wheaton, 337. † 6 Id. 314, 315, 325. ‡ 2 Id. 9.
§ 3 Id. 246. ‖ 5 Howard, 451.

gant pretensions of the same court to entire judicial, and, indeed, political independence of the State of California; pretensions subsequently abandoned by that court.*

The case of *Warner* v. *The Uncle Sam*,† places the concurrence of admiralty jurisdiction upon more temperate grounds; but its reasoning, upon examination, will be found fatal to its conclusion.

IV. It must be deemed a settled point, in constitutional law, that the whole grant of judicial power may become an exclusive jurisdiction in the courts of the United States, at the election and in the discretion of Congress.

The whole frame of the Judiciary Act, in its attribution of jurisdiction to the various Federal courts, recognizes and is shaped upon this idea.

Messrs. M. H. Edmonds, O. L. Lane, and W. W. Cope, contra, for the defendant in error:

We maintain:

1st. That this is not a case of admiralty or maritime jurisdiction.

2d. That the grant of such jurisdiction to the Federal courts, contained in the Constitution, is not exclusive.

3d. That these proceedings in the State court fall within the exception contained in the Judiciary Act of 1789, saving to suitors a common law remedy in all cases where the common law is competent to give it.

I. In admiralty, a vessel is not liable for torts, or breaches of contract in which it is in no way instrumental. And courts of admiralty do not take cognizance of torts committed on land. Nor is a contract for the transportation of passengers, made on land, to be performed partly on land and partly by water, as in this case, a "maritime contract." It may be urged that the substantial portion of the voyage was on the sea; for, while the admiralty jurisdiction was

* In Ferris *v.* Coover (11 California, 175), this pretension, advanced by the earlier judges of the Supreme Court of California, was exploded in an elaborate opinion rendered by Baldwin, J.; Field J., concurring.—REP.

† 9 California, 697.

confined to tide-water, it was held to be sufficient if the substantial portion of the voyage was within the ebb and flow of the tide, though its commencement or termination might be beyond.* But in those cases *the entire voyage was by water*, and made in *one* vessel. The contract in this case is an entirety, to carry from New York to San Francisco, requiring for its fulfilment two steamers and a railway. The *land* carriage is a substantial part of the voyage. It obviates the necessity of a long and tedious voyage by water, and gives to that route its chief value. It is of no consequence whether the land transit between the two oceans be long or short. The court will not determine the question of jurisdiction, by a comparison of the distances by land and by water. If this contract is of admiralty cognizance, so is an agreement for the transportation of passengers from Liverpool to San Francisco, *via* New York, Chicago, and Salt Lake. There is no difference in principle between the two cases. In both, the voyage by water forms a substantial part of the contract, and so does that by land.

If a passenger contract is of admiralty cognizance at all, it is because it comes substantially within the definition of an affreightment.† But affreightments relate exclusively to voyages by water. And it was conceded by Nelson, J., in the case just cited, that a contract "must be wholly of admiralty cognizance, or else it is not at all within it." He also expressly admits the correctness of the argument for the claimant, that "it is not enough that the contract includes an obligation, or some obligation of a maritime nature; but that it must, as an entirety in all its material and substantial parts, be for the performance of maritime services, or else the case is wholly without the limits of the admiralty jurisdiction." Assuming this to be the law, the agreement, in this case, is not as an entirety, a maritime contract.

Again, in a proceeding *ex contractu*, in the admiralty, there

* The Robert Morris, 1 Wallace, Jr., 33.

† The Pacific, 1 Blatchford, C. C. R. 569; Id. 360.

must not only be a maritime contract, but also a maritime cause of action. In other words, the ship must be bound for the performance of the contract, otherwise no cause of action *in rem* can exist.* It cannot be contended that the Moses Taylor was bound for the performance of an entire contract, according to the principles of admiralty and maritime law. It was only by force of the statute that she could have been held liable—at least for the breaches occurring on the Isthmus, inasmuch as she does not *appear* to have been the instrumental cause of the detention. And this court can presume no fact necessary to sustain the admiralty jurisdiction.†

II. The validity of State laws of the character of the statute of California has been expressly adjudicated in numerous cases.‡ And this court virtually concedes their validity: First, by basing thereon a portion of the admiralty jurisdiction of the District Courts;§ and, subsequently, by amending the twelfth rule in admiralty, so as to retain jurisdiction *in personam*, but leaving the enforcement of the lien *in rem* to the State courts.‖ No case has ever arisen calling for the determination of the question by this court. *Martin* v. *Hunter*, and *Cohen* v. *Virginia*, cited on the other side, were upon the question, whether a writ of error would lie to a State court? And in *Slocum* v. *Mayberry*, the question was not raised by the defendant in error. The judgment of the State court was affirmed, on the ground that the Embargo Act did not authorize the seizure of the cargo, and that replevin would lie for it in the State court.

In *Gelston* v. *Hoyt*, the only question presented was the legality of the ruling of the State court rejecting evidence of forfeiture, on the ground that the judgment of the United

* The Pacific, 1 Blatchford, C. C. R. 587.

† Peyroux *v.* Howard, 7 Peters, 341.

‡ Thompson *v.* Steamboat, 2 Ohio, N. S. 26; Owen *v.* Johnson, Id. 142; Keating *v.* Spink, 3 Id. 105; Steamboat *v.* McCraw, 31 Alabama, 659; Warner *v.* Uncle Sam, 9 California, 697; Taylor *v.* The Columbia, 5 Id. 268.

§ Gen. Smith, 4 Wheaton, 439; Peyroux *v.* Howard, 7 Peters, 324.

‖ McGuire *v.* Card, 21 Howard, 248; The St. Lawrence, 1 Black, 522.

States court was conclusive on that question. And the ruling of the State court was affirmed. *Waring* v. *Clarke* is not in point. In that, and in most of the cases where the question of admiralty jurisdiction has been discussed, the question was, whether it extended to such a case, not whether it was *exclusively* vested in the District Courts.

It is not denied that *dicta* may be found asserting or assuming such exclusive jurisdiction. But there is no case in which that question has been adjudged.

As an original question, it is submitted that it has no foundation in principle. The origin of all the misunderstanding on the subject lies in the Judiciary Act. Congress, throughout that act, legislated upon the supposition, that whatever jurisdiction was by the Constitution vested in the Federal courts might be made exclusive.* And judges and commentators have not always been sufficiently alive to the distinction between an act of Congress and a constitutional grant; and have assumed the jurisdiction to be exclusive without inquiry, because Congress declared it so. And because the language of the Judiciary Act raised a doubt of the jurisdiction of the State tribunals, suitors have usually sought redress in the District Courts, whose jurisdiction was unquestioned; and hence has arisen a sort of negative acquiescence in a doctrine often asserted, but never demonstrated nor decided; not such a general acquiescence, however, as counsel for the plaintiff in error seems to believe. The cases already cited, and many others asserting the validity of State laws, like the present, are sufficient to rebut any presumption of acquiescence. It is also well known that most of the States bordering on navigable waters have similar laws, and that the courts of such States have hitherto exercised almost unquestioned jurisdiction under such laws, by proceedings *in rem*.

The determination of this important question must, after all, depend upon the true construction to be given to the Constitution.

* Story on the Constitution, § 1751.

Argument in favor of State jurisdiction.

Among the most approved rules of interpretation to determine the exclusiveness of Federal authority, are the following: 1. Where the grant is exclusive in its terms. 2. Where the power is prohibited to the States. 3. Where there is a direct repugnancy, or incompatibility, in its exercise by the States.*

"In all other cases," says Story, J., in *Houston* v. *Moore*,† "a reasonable interpretation of that instrument necessarily leads to the conclusion, that the powers so granted are never exclusive of similar power existing in the States."

It is not to be denied that Judge Story was disposed to concede to the admiralty courts their full measure of jurisdiction. He frequently speaks of it as exclusive, not because made so in terms, nor because it is prohibited to the States, but on account of a supposed repugnancy, or incompatibility, in its exercise by the States.

Houston v. *Moore* decided that the act of the State of Pennsylvania providing for the trial by a State court-martial, of certain military offences, was not repugnant to the Constitution and laws of the United States. No other question was raised or determined, but the learned justice, who dissented from the opinion of the court, mentions the exclusiveness of admiralty jurisdiction, incidentally, by way of argument, citing *Martin* v. *Hunter*, in which the opinion was delivered by himself, and in which he says:

"It is manifest that the judicial power of the United States is unavoidably, in some cases, exclusive of all State authority; and in all others may be made so at the election of Congress. . . . . The admiralty and maritime jurisdiction is of the same exclusive cognizance; and it can only be in those cases, where previous to the Constitution, State tribunals possessed jurisdiction independent of national authority, that they can now constitutionally exercise concurrent jurisdiction."

* Story on the Constitution, § 436, 447; 1 Kent's Com. 396.

† 5 Wheaton, 49.

Misled by this case, Chancellor Kent expressed the opinion in his Commentaries, that "whatever admiralty and maritime jurisdiction the District Courts possess, would seem to be *exclusive*." His attention thus aroused, Mr. Justice Story noticed the "mistake," as he terms it, in a note to section 1762, of his Commentaries on the Constitution. He there rejects the discretionary power of Congress, as well as the exclusive jurisdiction of the admiralty, and says:

"There is nothing in the Constitution necessarily leading to the conclusion that the jurisdiction was intended to be exclusive, and there is as little ground upon general reason, to contend for it."

Chancellor Kent, in acknowledging the correction, charged his error upon Story, J., himself, or rather upon the case of *Martin* v. *Hunter*, as above stated, and concludes by saying:

"But we are taught by the note in the Commentaries referred to, that the State courts have all the concurrent cognizance which they had originally, in 1787, over maritime contracts, and that this concurrent jurisdiction does not depend, as declared in 1 Wheaton, 337, on the pleasure of Congress, but is founded on the 'reasonable interpretation of the Constitution.' "*

Again, the Federalist shows† that the grant of jurisdiction to the Federal courts was not intended to be exclusive; and at all events that "the State courts would be divested of no part of their primitive jurisdiction, further than may relate to an appeal."

It may, therefore, be considered as established—

1. That the grant of admiralty and maritime jurisdiction in the Constitution, is not exclusive in its terms.

2. That it is not prohibited to the State courts.

3. That if intended to be exclusive, such intention must be found in some repugnancy or incompatibility in the exercise of like powers by the State tribunals.

* 1 Kent's Com. 377, note *c*, 9th ed., marginal paging.

† Nos. 81 and 82.

4. That if not intended to be exclusive, Congress cannot make it so, if the result would be to divest the State courts of any part of their primitive jurisdiction.

It is well known that at the time of the adoption of the Constitution, whatever admiralty jurisdiction existed in this country, was exercised by the State courts, with the exception of piracies and felonies on the high seas and *appeals* in cases of capture. Before the Revolution each colony had its court of admiralty. During the Revolution and up to the adoption of the Constitution, this jurisdiction was vested in and exercised by the States respectively, subject to the power of Congress as contained in the Articles of Confederation,* to establish courts for receiving and determining finally *appeals* in all cases of capture, and courts for the trial of piracies and felonies committed on the high seas.

At that time then "admiralty and maritime cases" as clearly belonged to the State courts as those of chancery and common law. They belonged to the State courts independently of the Articles of Confederation, and did not in any manner "grow out of" the Constitution itself. When therefore by the provisions of that instrument, cognizance of such cases was granted to the Federal courts without *words* of exclusion, the principle of exclusion must be found, if found at all, in the incompatibility of the exercise of like powers concurrently by the State and Federal courts. If not found there, it is not contained in the Constitution. And what the Constitution permits in this regard, either expressly or by implication and reasonable inference, Congress cannot prohibit.

Now let us examine this question of incompatibility. The rule, as stated by Story, in his Commentaries on the Constitution,† is this:

"The power is exclusive in the National Government where an authority is granted to the Union, to which a similar authority in the States would be absolutely and totally contradictory and repugnant. The principal difficulty lies not so

* Article 9, § 1.

† §§ 437, 438.

much in the rule, as in its application to particular cases. But unless from the nature of the power, or from the obvious results of its operations, a repugnancy *must* exist, so as to lead to a *necessary* conclusion, that the power was intended to be exclusive, the true rule of interpretation is, that the power is merely concurrent."

This repugnancy therefore may exist either in the *nature* of the power, or its practical operations. That conflicts may arise in the exercise of *acknowledged* concurrent powers is conceded.

In such cases the Constitution provides the remedy in the declared supremacy of the Constitution and laws of the Union, and the supervisory control of the Supreme Court. In the exercise of concurrent *judicial* powers, courts have also adopted a rule of judicial comity eminently calculated to prevent such conflicts. It is, that the court which first obtains possession or custody of the thing by attachment or proceeding *in rem*, shall retain it. Such was the case of the *Robert Fulton*.* That was a case of admiralty cognizance. And the libel was dismissed because an attachment under the Boat and Vessel Act of the State, had previously been levied on the vessel, and she was in the custody of the sheriff when the libel was filed.

The following are given as samples of concurrent powers: The power to lay taxes,† though expressly given to Congress. So by the Constitution Congress has the power to lay and collect duties, imposts, and excises which "shall be uniform throughout the United States." But the license laws of Massachusetts, Rhode Island, and New Hampshire, forbidding the sale of spirituous liquors, in less than certain large quantities, were held not to be repugnant to this clause, nor to that regulating commerce.‡

So the States are not deprived of the power of regulating pilots, when such regulation does not interfere with the acts of Congress. So the *power* granted to Congress to establish

* 1 Paine, 626. † Story on the Constitution, § 438.

‡ The License Cases, 5 Howard, 504–577.

uniform laws on the subject of bankruptcies does not deprive the States of the power to pass bankrupt laws. So offences against the military laws of the United States by persons called into the service of the United States, may be tried by State courts-martial, where the act of Congress does not *expressly* vest exclusive jurisdiction in the courts-martial thereby authorized.*

So the State courts have unquestioned concurrent cognizance of nearly all the cases mentioned in the third article of the second section of the Constitution.

Cases affecting ambassadors, &c., are of exclusive Federal cognizance, and *rightfully*, because they *grow out of the Constitution itself.* Most of the other enumerated cases do not, and are, therefore, properly left by the Judiciary Act where the Constitution left them,—to the cognizance of the State and Federal courts concurrently. It is not easy to conceive what practical difficulties could arise in the exercise of concurrent admiralty powers, greater than have occurred in other cases and been surmounted.

To sustain the third proposition, we cite the cases under the second head, declaring and conceding the validity of these local laws.†

Mr. Justice FIELD delivered the opinion of the court.

This case arises upon certain provisions of a statute of California regulating proceedings in civil cases in the courts of that State.‡ The sixth chapter of the statute relates to actions against steamers, vessels, and boats, and provides that they shall be liable—1st, for services rendered on board of them, at the request of, or on contract with, their respective owners, agents, masters, or consignees; 2d, for supplies furnished for their use upon the like request; 3d, for materials furnished in their construction, repair, or equipment; 4th, for their wharfage and anchorage within the State; 5th,

* Houston *v.* Moore, 5 Wheaton, 1.

† See, also, Cashmere *v.* De Wolf, 2 Sandford Supreme Court (N. Y.), 379; Percival *v.* Hickey, 18 Johnson, 291; Blake *v.* Patton, 15 Maine, 173.

‡ Laws of California of 1851, p. 51.

for non-performance or mal-performance of any contract for the transportation of persons or property made by their respective owners, agents, masters, or consignees; 6th, for injuries committed by them to persons or property; and declares that these several causes of action shall constitute liens upon the steamers, vessels, and boats, for one year after the causes of action shall have accrued, and have priority in the order enumerated, and preference over all other demands. The statute also provides that actions for demands arising upon any of these grounds may be brought directly against the steamers, vessels, or boats by name; that process may be served on the master, mate, or any person having charge of the same; that they may be attached as security for the satisfaction of any judgment which may be recovered; and that if the attachment be not discharged, and a judgment be recovered by the plaintiff, they may be sold, with their tackle, apparel, and furniture, or such interest therein as may be necessary, and the proceeds applied to the payment of the judgment.

These provisions, with the exception of the clause designating the order of priority in the liens, and their preference over other demands, were enacted in 1851; that clause was inserted by an amendment in 1860.

In 1863, the steamship Moses Taylor, a vessel of over one thousand tons burden, was owned by Marshall O. Roberts, of the city of New York, and was employed by him in navigating the Pacific Ocean, and in carrying passengers and freight between Panama and San Francisco. In October of that year the plaintiff in the court below, the defendant in error in this court, entered into a contract with Roberts, as owner of this steamship, by which, in consideration of one hundred dollars, Roberts agreed to transport him from New York to San Francisco as a steerage passenger, with reasonable despatch, and to furnish him with proper and necessary food, water, and berths, or other conveniences for lodging, on the voyage. The contract, as set forth in the complaint, does not in terms provide for transportation on any portion of the voyage by the Moses Taylor, but the case

was tried upon the supposition that such was the fact, and we shall, therefore, treat the contract as if it specified a transportation by that steamer on the Pacific for the distance between Panama and San Francisco. For alleged breach of this contract the present action was brought, under the statute mentioned, in a court of a justice of the peace held within the city of San Francisco. Courts held by justices of the peace were at that time by another statute invested with jurisdiction of these cases, where the amount claimed did not exceed two hundred dollars, except where the action was brought to recover seamen's wages for a voyage performed, in whole or in part, without the waters of the State.*

The agent for the Moses Taylor appeared to the action, and denied the jurisdiction of the court, insisting that the cause of action was one over which the courts of admiralty had exclusive jurisdiction, and also traversed the several matters alleged as breaches of the contract.

The justice of the peace overruled the objection to his jurisdiction, and gave judgment for the amount claimed. On appeal to the County Court the action was tried *de novo* upon the same pleadings, but in all respects as if originally commenced in that court. The want of jurisdiction there, and the exclusive cognizance of such causes of action by the courts of admiralty were again urged and were again overruled; and a similar judgment to that of the justice of the peace was rendered. The amount of the judgment was too small to enable the owner of the steamer to take the case by appeal to the Supreme Court of the State. That court has no appellate jurisdiction in cases where the demand in dispute, exclusive of interest, is under three hundred dollars, unless it involve the legality of a tax, impost, assessment, toll, or municipal fine.† The decision of the County Court was the decision of the highest court in the State which had jurisdiction of the matter in controversy. From that court, therefore, the case is brought here by writ of error.

* Laws of California of 1853, p. 287, and of 1856, p 133.

† Constitution of the State, Art. VI, sec. 4, as amended in 1862.

Opinion of the court.

The case presented is clearly one within the admiralty and maritime jurisdiction of the Federal courts. The contract for the transportation of the plaintiff was a maritime contract. As stated in the complaint, it related exclusively to a service to be performed on the high seas, and pertained solely to the business of commerce and navigation. There is no distinction in principle between a contract of this character and a contract for the transportation of merchandise. The same liability attaches upon their execution both to the owner and the ship. The passage-money in the one case is equivalent to the freight-money in the other. A breach of either contract is the appropriate subject of admiralty jurisdiction.

The action against the steamer by name, authorized by the statute of California, is a proceeding in the nature and with the incidents of a suit in admiralty. The distinguishing and characteristic feature of such suit is that the vessel or thing proceeded against is itself seized and impleaded as the defendant, and is judged and sentenced accordingly. It is this dominion of the suit in admiralty over the vessel or thing itself which gives to the title made under its decrees validity against all the world. By the common law process, whether of mesne attachment or execution, property is reached only through a personal defendant, and then only to the extent of his title. Under a sale, therefore, upon a judgment in a common law proceeding the title acquired can never be better than that possessed by the personal defendant. It is his title, and not the property itself, which is sold.

The statute of California, to the extent in which it authorizes actions *in rem* against vessels for causes of action cognizable in the admiralty, invests her courts with admiralty jurisdiction, and so the Supreme Court of that State has decided in several cases. In *Averill* v. *The Steamer Hartford*,* the court thus held, and added that "the proceedings in such actions must be governed by the principles and forms

* 2 California, 308.

of admiralty courts, except where otherwise controlled or directed by the act."

This jurisdiction of the courts of California was asserted and is maintained upon the assumed ground that the cognizance by the Federal courts "of civil causes of admiralty and maritime jurisdiction" is not exclusive, as declared by the ninth section of the Judiciary Act of 1789.

The question presented for our determination is, therefore, whether such cognizance by the Federal courts is exclusive, and this depends either upon the constitutional grant of judicial power, or the validity of the provision of the ninth section of the act of Congress.

The Constitution declares that the judicial power of the United States "shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State or the citizens thereof and foreign States, citizens, or subjects."*

How far this judicial power is exclusive, or may, by the legislation of Congress, be made exclusive, in the courts of the United States, has been much discussed, though there has been no direct adjudication upon the point. In the opinion delivered in the case of *Martin* v. *Hunter's Lessee*,† Mr. Justice Story comments upon the fact that there are two classes of cases enumerated in the clause cited, between which a distinction is drawn; that the first class includes cases arising under the Constitution, laws, and treaties of the United States, cases affecting ambassadors, other public ministers, and consuls, and cases of admiralty and maritime

* Article II, § 2.

† 1 Wheaton, 334.

jurisdiction; and that, with reference to this class, the expression is that the judicial power shall extend to *all cases;* but that in the subsequent part of the clause, which embraces all the other cases of national cognizance, and forms the second class, the word "all" is dropped. And the learned justice appears to have thought the variation in the language the result of some determinate reason, and suggests that, with respect to the first class, it may have been the intention of the framers of the Constitution imperatively to extend the judicial power either in an original or appellate form to all cases, and, with respect to the latter class, to leave it to Congress to qualify the jurisdiction in such manner as public policy might dictate. Many cogent reasons and various considerations of public policy are stated in support of this suggestion. The vital importance of all the cases enumerated in the first class to the national sovereignty is mentioned as a reason which may have warranted the distinction, and which would seem to require that they should be vested exclusively in the national courts,—a consideration which does not apply, at least with equal force, to cases of the second class. Without, however, placing implicit reliance upon the distinction stated, the learned justice observes, in conclusion, that it is manifest that the judicial power of the United States is in some cases unavoidably exclusive of all State authority, and that in all others it may be made so at the election of Congress. We agree fully with this conclusion. The legislation of Congress has proceeded upon this supposition. The Judiciary Act of 1789, in its distribution of jurisdiction to the several Federal courts, recognizes and is framed upon the theory that in all cases to which the judicial power of the United States extends, Congress may rightfully vest exclusive jurisdiction in the Federal courts. It declares that in some cases, from their commencement, such jurisdiction shall be exclusive; in other cases it determines at what stage of procedure such jurisdiction shall attach, and how long and how far concurrent jurisdiction of the State courts shall be permitted. Thus, cases in which the United States are parties, civil

causes of admiralty and maritime jurisdiction, and cases against consuls and vice-consuls, except for certain offences, are placed, from their commencement, exclusively under the cognizance of the Federal courts.

On the other hand, some cases, in which an alien or a citizen of another State is made a party, may be brought either in a Federal or a State court, at the option of the plaintiff; and if brought in the State court may be prosecuted until the appearance of the defendant, and then, at his option, may be suffered to remain there, or may be transferred to the jurisdiction of the Federal courts.

Other cases, not included under these heads, but involving questions under the Constitution, laws, treaties, or authority of the United States, are only drawn within the control of the Federal courts upon appeal or writ of error, after final judgment.

By subsequent legislation of Congress, and particularly by the legislation of the last four years, many of the cases, which by the Judiciary Act could only come under the cognizance of the Federal courts after final judgment in the State courts, may be withdrawn from the concurrent jurisdiction of the latter courts at earlier stages, upon the application of the defendant.

The constitutionality of these provisions cannot be seriously questioned, and is of frequent recognition by both State and Federal courts.

The cognizance of civil causes of admiralty and maritime jurisdiction vested in the District Courts by the ninth section of the Judiciary Act, may be supported upon like considerations. It has been made exclusive by Congress, and that is sufficient, even if we should admit that in the absence of its legislation the State courts might have taken cognizance of these causes. But there are many weighty reasons why it was so declared. "The admiralty jurisdiction," says Mr. Justice Story, "naturally connects itself, on the one hand, with our diplomatic relations and the duties to foreign nations and their subjects; and, on the other hand, with the great interests of navigation and commerce, foreign and do-

mestic. There is, then, a peculiar wisdom in giving to the national government a jurisdiction of this sort which cannot be yielded, except for the general good, and which multiplies the securities for the public peace abroad, and gives to commerce and navigation the most encouraging support at home."*

The case before us is not within the saving clause of the ninth section. That clause only saves to suitors "the right of a common-law remedy, where the common law is competent to give it." It is not a remedy in the common-law courts which is saved, but a common-law remedy. A proceeding *in rem*, as used in the admiralty courts, is not a remedy afforded by the common law; it is a proceeding under the civil law. When used in the common-law courts, it is given by statute.

It follows, from the views expressed, that the judgment of the County Court must be reversed, and the cause remanded, with directions to dismiss the action for want of jurisdiction.

AND IT IS SO ORDERED.

SEMPLE v. HAGAR.

1. When a want of jurisdiction is patent, or can be readily ascertained by an examination of the record in advance of an examination of the questions on the argument of the merits, this court will entertain and act upon a motion to dismiss for want of jurisdiction.
2. Where two parties held patents for land from the United States, under Mexican grants, both of which included the same lands in part, and one of the parties brought a suit in a State court to vacate the patent of the other, to the extent of the conflict of title, and the State court refused to entertain jurisdiction of the question, and dismissed the complaint, this court has no jurisdiction, under the twenty-fifth section of the Judiciary Act, to review the judgments.

SEMPLE filed a bill against Hagar in one of the State courts of California. The bill alleged that he, the complainant

* Commentaries, § 1672.